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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/903,219	07/10/2001	Russell A. Houser	441742000102	9953

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EXAMINER

WOO, JULIAN W

ART UNIT	PAPER NUMBER
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3731

DATE MAILED: 01/06/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/903,219

Applicant(s)

HOUSER ET AL.

Examiner

Julian W. Woo

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 06 November 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-27, 42, 43, 48-50, 52-65, 68-105 and 107-115 is/are pending in the application.
- 4a) Of the above claim(s) 1-27, 42, 43, 48-50, 52-65 and 68-103 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 104, 105, and 107-115 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.  
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

### Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

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## DETAILED ACTION

### *Election/Restrictions*

1. The provisional election, with traverse, of claims 104-114 is hereby acknowledged. The withdrawal of claims 1-27, 42, 43, 48-50, 52-65, and 68-103 is also acknowledged.

### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claims 104, 107, and 109-112 are rejected under 35 U.S.C. 102(b) as being anticipated by Giannuzzi (4,197,781). With respect to claims 104, 112, and 115, Giannuzzi disclose, in figures 8-11 and in col. 3, line 63 to col. 4, line 58, a connector with an annular structure(10); at least one, radially deformable compressible member (11) having first and second segments (C and A, D and B) extending from the distal end of the annular structure, where distal ends of the segments are attached to each other (at 17), where the compressible member has a first reduced profile and a second expanded profile, and where the first and second segments are curved (at W<sub>1</sub> and W<sub>2</sub>) when the compressible member is in the expanded profile and define a loop

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configuration. With respect to claims 107 and 109, the compressible member is radially self-expanding upon removal of a constraining force. With respect to claims 110 and 111, the compressible member comprises a memory elastic material or a thermoset plastic, such as polypropylene or nylon. Note: The introductory statement of intended use ("for connecting a tubular graft to a blood vessel or hollow organ") has been carefully considered but deemed not to impose any structural limitations on the claims patentably distinguishable over Giannuzzi's device, which is capable of being used as claimed if one desires to do so.

4. Claims 104, 105, 107, 108, and 110-114 rejected under 35 U.S.C. 102(e) as being anticipated by Huebsch et al. (5,853,422). With respect to claims 104, 105, 112, and 115, Huebsch et al. disclose, in figures 2-5b and in col. 3, line 49 to col. 4, line 51, an annular structure (18); a connector with at least one, radially deformable compressible member (10) having first and second segments (22) extending from the distal end of the annular structure, where distal ends of the segments are attached to each other (at 16), where the compressible member has a first reduced profile and a second expanded profile, where first and second segments are curved when the compressible member is in the expanded profile (at 24), and where the first and second segments define a loop configuration. With respect to claims 107 and 108, the compressible member expands upon removal of a catheter (40) that provides a constraining force (e.g., see fig. 5b.) With respect to claims 110 and 111, the compressible member comprises a memory elastic material, such as stainless steel, nickel titanium, or a thermoset plastic. With respect to claim 113, the radially enlarged

profile is substantially circular, if the compressible member is viewed along the longitudinal axis. With respect to claim 114, figures 5a and 5b disclose that the compressible member is configured to conform to surfaces of an organ. Note: The introductory statement of intended use ("for connecting a tubular graft to a blood vessel or hollow organ") has been carefully considered but deemed not to impose any structural limitations on the claims patentably distinguishable over device of Huebsch et al., which is capable of being used as claimed if one desires to do so.

***Response to Amendment***

5. With respect to arguments regarding the rejection under 35 U.S.C. 102 of claims 104, 105, and 107-114 based on the references of Giannuzzi and Huebsch et al.: See the rejections above.

***Conclusion***

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

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the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Julian W. Woo whose telephone number is (703) 308-0421. The examiner can normally be reached Mon.-Fri., 7:00 AM to 3:00 PM Eastern Time, alternate Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael J. Milano can be reached at (703) 308-2496.

General inquiries relating to the status of this application should be directed to the Group receptionist at (703) 308-0858. The official FAX number is (703) 872-9302.



Julian W. Woo  
Primary Examiner

January 5, 2004